Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Brett Herold Blitch,

Petitioner

V.

United States of America,

Respondent

On Petition For Writ Of Certiorari

To The United States Court of Appeals For the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

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47pp

QUESTIONS PRESENTED

At the trial of this arson case, Petitioner requested a jury charge on the common law rule that fires are presumed accidental. The Eleventh Circuit, without opinion, affirmed the District Court's refusal to give the charge. The District Court believed that the common law rule did not apply to the federal arson statute, *18 U.S.C. §844* (i).

The first question presented in this case is whether the common law is a part of the federal arson statute under *Moskal v. United States, 498 U.S. 103, 116-117 (1990)*..

Petitioner was convicted of conspiracy to commit arson and mail fraud; arson; mail fraud and money laundering. The alleged conspiracy consisted of burning a building for the purpose of collecting insurance. The counts were grouped into two groups under *U.S.S.G. §3D1.4* rather than one group under *U.S.S.G. §3D1.2* for sentencing purposes. This resulted in a higher sentence.

The second question presented in this case is whether *U.S.S.G. §3D1.4* or *U.S.S.G. §3D1.2* is the proper guideline for sentencing when there was one alleged scheme from the beginning which contemplated all of the offenses of which the Petitioner was convicted.

The sentence of Brett Blitch was enhanced by the District Court for an alleged leadership role under a preponderance of the evidence standard. That issue was not presented to the jury and proved beyond reasonable doubt.

The third question presented is whether a trial court must present fact issues, which are the basis for sentence enhancement, to a jury for proof beyond reasonable doubt.

The only evidence connecting Brett Blitch to the alleged conspiracy was a confession and statements of co-defendant Jerry Moore that "spilled the beans".

The fourth question is whether the confession and statements of Jerry Moore were sufficient to convict Brett Blitch under *Bourjaily v. United States, 483 U.S. 171 (1987)* and *Jackson v. Virginia, 443 U. S. 307 (1979).*

PARTIES TO THE PROCEEDINGS BELOW

Brett Herold Blitch

Jerry Moore

United States of America

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PETITION FOR A WRIT OF CERTIORARI

Brett Blitch respectfully petitions this Court for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit affirmed the judgment and sentence of the District Court without opinion in an unpublished order. (App-1, *infra*). The Eleventh Circuit denied the petition for rehearing. (App-2, *infra*).

JURISDICTION

The petition for rehearing was denied on August 30, 2000. (App-2, *infra*). This petition is filed within 90 days of said date. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 844(i), 18 U.S.C., provides in pertinent part:

> Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of a fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in activity affecting interstate or foreign commerce shall be imprisoned ***.

U.S.S.G.§ 3B1.1(C) provides in pertinent part:

> If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels.

U.S.S.G.§ 6A1.3 commentary provides in pertinent part:

> The Commission believes that use of a preponderance of the evidence standard is appropriate to meet due process requirements***.

U.S.S.G.§ 3D1.2 provides in pertinent part:

> All counts involving substantially the same harm shall be grouped together into a single Group. Counts involve substantially the same harm within the meaning of this rule:
>
> i. When counts involve the same victim and the same act or transaction.
> ii. When counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan.
> ***

STATEMENT

Petitioner Brett Herold Blitch was named with co-

defendants Larry Wayne Day and Jerry Keith Moore in a multi-count indictment issued on December 2, 1998, which alleged that the defendants conspired to burn the Blitch Ford dealership in Homerville, Georgia for insurance money. (App-3, *infra*). Petitioner was convicted on five counts of the indictment in the United States District Court for the Middle District of Georgia. (App-4, *infra*). Larry Day, the alleged lynchpin of the conspiracy, was acquitted.

The Georgia State Fire Marshall who did the scene investigation testified that the cause of the fire was "undetermined" and that he found no evidence at the scene that the fire was an incendiary or an intentionally set fire. (App-5a, *infra*). The Fire Marshall further testified that there were several possible origins of the fire, none of which were criminal and none of which had been ruled out. (App-5b, *infra*).

Approximately one year after the fire, a statement was taken by law enforcement officers from Defendant Jerry Moore in which Moore stated: " I have a part in the Homerville Ford place, Blitch Ford being destroyed." (App- 5c, *infra*).

A government informant, Stan Wrubliski, testified that, after the fire, Defendant Moore told him that he had set the fire, that Brett Blitch had paid Larry Day money and Day would pay Moore. (App-5d, *infra*).

The government presented a witness who testified that Defendant Jerry Moore had stated, after the fire, that Brett Blitch had paid Moore some money. (App-5e, *infra*).

There was no evidence that Brett Blitch was at or near the scene of the fire and there are no confessions or incriminating statements from Brett Blitch.

Petitioner Brett Blitch submitted a request to charge to the trial court which set forth the common law principle that the law presumes that a fire is of accidental or providential cause. The verbatim request to charge was:

Defendant's Request No. _____

The law presumes that a fire is of

accidental or providential cause. The government has the burden of proving beyond a reasonable doubt that the fire was caused by criminal agency. If after considering the evidence, you are not convinced beyond a reasonable doubt as to the cause of the fire, then you would not be entitled to convict any defendant.

United States v. Doe, 136 F.3d 631, 638 (9th Cir. 1998) (Fletcher, J., dissenting; **Kennedy v. The State,** 172 Ga. App. 336, 3223 S.E.2d 169, 173 91984); 5 AM. JUR. 2D *Arson and Related Offenses.*

The trial court refused to give Petitioner's request to charge opining that the federal common law did not apply to the federal arson statute. (App- 6, *infra*).

At the sentencing hearing, the trial court adopted the guideline application in the presentence report and grouped the offenses of which Petitioner was convicted into two groups which resulted in an increased sentence. (App-7; App.-9, *infra*).

At the sentencing hearing, the trial court also, by adopting the factual findings in the presentence report, enhanced the punishment of Petitioner by two years. (App-8, *infra*). The trial court did not submit the issue of leadership to the jury for resolution under the standard of beyond reasonable doubt.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully submits that this Petition should be granted for the following reasons:

1. The Circuit Courts Are Now Divided Over the Issue of Application of the Common Law to the Federal Arson Statute and the Decision of the Eleventh Circuit in This Case Conflicts With Previous Decisions of This Court

In *Moskal v. United States, 498 U.S. 103, 116-117 (1990)*, this Court held that:

> In the absence of any indication to the contrary, we must assume that when Congress adopted the common law definition of the crime of arson–the willful and malicious burning of a building–it intended to adopt the meaning that common law gave that phrase.

The common law rule is that fires are presumed accidental. *United States v. Doe, 136 F.3d 631 (9th Cir. 1998); Kennedy v. State*, 172 Ga. App. 336, 323 S.E.2d 169, 173 (1984); *Parker v. State, 353 SE.2d 83 (1987); Lockhart v. State, 45 S.E.2d 698 (1947); Wade v. State, 25 S.E.2d 712 (1943); Wharton's Criminal Law* 337 (15th ed. 1995); 5 AM.JUR. 2D **Arson and Related Offenses** 47 (1995).

In this case, Petitioner sought the aid of the common law presumption in view of the fact that there was no physical evidence of arson and, according to the Fire Marshall, the cause was "undetermined". (App-5a, *infra*). Petitioner submitted the following request:

Defendant's Request No. _____

The law presumes that a fire is of accidental or providential cause. The government has the burden of proving beyond a reasonable doubt that the fire was caused by criminal agency. If after considering the evidence, you are not convinced beyond a reasonable doubt as to the cause of the fire, then you would not be entitled to convict any defendant.

United States v. Doe, 136 F.3d 631, 638 (9th Cir. 1998) (Fletcher, J., dissenting; **Kennedy v. The State,** 172 Ga. App. 336, 3223 S.E.2d 169, 173 91984); 5 AM. JUR. 2D *Arson and Related Offenses.*

The trial court was of the opinion that the common law rule did not apply to the federal arson statute and did not give the requested charge. (App-6, *infra*).

The Eleventh Circuit agreed with the trial court and affirmed without opinion. (App-1, *infra*).

As set forth in this Court's opinion in *Moskal v. United States, 498 U.S. 103, 116-117 (1990)* and in the 9th Circuit opinion in *United States v. Doe,* 136 F.3d 631, 638 (9th Cir. 1998), the common law rules surrounding arson are a part of the federal arson statute. There is no indication from Congress that it did not intend for the common law rules to apply.

What was clear law has now become muddled by the decision of the Eleventh Circuit in this case.

In view of the lack of physical evidence of arson and of the opinion of the Fire Marshal, the charge on the common

law presumption was critical to Petitioner's defense.

This Court should grant review in order to clear up the confusion that now exists by virtue of the Eleventh Circuit decision in this case and to correct the significant error of the trial court.

2. The Circuit Courts Are Divided Over When Separately Charged Crimes Which Are Part of One Continuous, Seamless Offense Should Be Grouped Together For Sentencing Purposes

Petitioner was indicted on charges, and the government argued at trial, that Petitioner was part of a conspiracy that consisted of the burning of property for the purpose of collecting insurance proceeds. (App-3, *infra).*

The trial court made two groups out of the various crimes which were alleged to be a part of the conspiracy and calculated the sentence under the provisions of *U.S.S.G.§ D1.4* rather than under *U.S.S.G.§ 3D1.2.* (App-7 , *infra*).
The Eleventh Circuit affirmed the trial court's grouping without opinion. (App-1, *infra*).

The decision of the Eleventh Circuit conflicts with a very similar case in the Second Circuit, which involved arson and mail fraud. In *United States v. Mizrachi, 48 F.3d 651 (2d Cir. 1995),* the Second Circuit held that grouping, with regard to arson and mail fraud:

> Is consistent with section 3D1.2(d). The offense behavior starting with the bank fraud and ending with the arson and the insurance fraud was "ongoing or continuous," and the offense guideline for arson "is written to cover such behavior" in that the guideline contemplates an arson "committed in connection with a scheme to defraud." *U.S.S.G.§*

2K1.4 (a)(3).

Id. at 655.

The "Introductory Commentary" to *PART D - MULTIPLE COUNTS* of the Sentencing Guidelines provides, in pertinent part, as follows:

> Some offenses that may be charged in multiple-count indictments are so closely intertwined with other offenses that conviction for them ordinarily would not warrant increasing the guideline range.
> ***
> When offenses are closely interrelated, group them together for purposes of the multiple-count rules, and use only the offense level for the most serious offense in that group.
> ***

The trial court grouped conspiracy to commit arson and arson into one group and conspiracy to commit mail fraud and mail fraud into a second group. (App-7; App.-9, *infra*).

The Eleventh Circuit's decision to uphold the grouping of separate crimes, which are an essential part of a scheme alleged in an indictment, into separate and distinct groups, was error. The Eleventh Circuit decision in this regard is in conflict with the Second Circuit case of *United States v. Mizrachi, 48 F.3d 651 (2d Cir. 1995).* It is further in conflict with the guidelines of the United States Sentencing Commission. This Court should grant review to settle the conflict between the Eleventh and Second Circuits and to clarify when there should be, and should not be, grouping when there are separate crimes alleged as part of one overall conspiracy to commit arson for the purpose of collecting

insurance proceeds.

3. The Decision of the Eleventh Circuit Approving Enhancement of Petitioner's Sentence For a Leadership Role Without Submitting the Issue to the Jury Under the Standard of Beyond Reasonable Doubt is in Conflict With *Apprendi v. New Jersey, 530 U.S. __, 120 S.Ct. 2348 (2000).*

The sentence of Petitioner was enhanced by the trial court under a preponderance of the evidence standard. (App-7; App.-8, *infra*).

The trial court merely adopted the factual findings set forth in the presentence report which alleged that Petitioner was a leader for the purposes of sentence enhancement. (App-7; *App.-8, infra*). The presentence report provided as follows:

> Pursuant to U.S.S.G.§ 3B1.1(c), the defendant was an organizer, leader, manager, or supervisor in the criminal activity. Therefore, an upward adjustment of 2 levels is appropriate. (App-7; App.-8, *infra*).

The issue of what role Petitioner played was not submitted to the jury and was decided by a mere adoption of facts set forth in the pre-sentence report under a preponderance of the evidence standard. Failure to submit the issue to the jury is contrary to this Court's opinion in *Apprendi v. New Jersey, 120 S.Ct. 2348 (2000).*

Review should be granted to clarify how, and under what standard, a leadership role can be established for punishment enhancement purposes.

4. Petitioner Was Convicted Based Upon Confessions of a Co-Defendant and Statements of a Co-Defendant Which Were Not Made During the Course of and in Furtherance of the Conspiracy. Petitioner's Conviction is Contrary to *Bourjaily v. United States, 483 U.S. 171 (1987)* and *Jackson v. Virginia, 443 U. S. 307 (1979).*

There was no physical evidence of arson in this case and the Fire Marshal testified that the cause of the fire was "undetermined". (App-5a, *infra*). The only evidence connecting Petitioner Brett Blitch to the fire were confessions of co-defendant Jerry Moore.

Approximately one year after the fire, a statement was taken by law enforcement officers from Defendant Jerry Moore in which Moore stated: " I have a part in the Homerville Ford place, Blitch Ford being destroyed." (App-5c, *infra*).

A government informant, Stan Wrubliski, testified that, after the fire, Defendant Moore told him that he had set the fire, that Brett Blitch had paid Larry Day money and Day would pay Moore. (App-5d, *infra*).

The government presented a witness who testified that Defendant Jerry Moore had stated, after the fire, that Brett Blitch had paid Moore some money. (App-5e, *infra*).

There was no evidence that Brett Blitch was at or near the scene of the fire and there are no confessions or incriminating statements from Brett Blitch.

Out of court statements, are "presumptively unreliable". *Bourjaily v. United States, 483 U.S. 171*, 179 (1987). There was no showing by the government that the out of court statements by co-defendant Moore were made in furtherance of the conspiracy as required by precedent. *United States v. Byrom, 910 F.2d 727, 734 (11th Cir. 1990).* Statements that "spill the beans" are not statements made in furtherance of a conspiracy. *United States v. Posner, 764 F.2d 1535 (11th Cir. 1985).*

Since the out of court statements made by co-defendant Moore are not evidence against Petitioner, the government did

not prove the guilt of Petitioner beyond reasonable doubt and the conviction should be reversed under *Jackson v. Virginia, 443 U. S. 307 (1979).* Review should be granted to correct the use by the Eleventh Circuit of confessions and statements not made in furtherance of a conspiracy as a basis for conviction.

CONCLUSION

The Eleventh Circuit has failed to follow clear precedent of this Court which establishes that the common law is a part of the federal arson statute.

The Eleventh Circuit is now in conflict with other Circuits and the Sentencing Commission concerning when multiple counts of an indictment should be grouped separately for sentencing purposes.

The Court below, in failing to submit the issue of sentence enhancement to the jury under a reasonable doubt standard, is in conflict with this Court's opinion in *Apprendi v. New Jersey, 120 S.Ct. 2348 (2000).*

Petitioner has been denied due process in that he has been convicted by out of court confessions by a co-defendant which were not made during the course of and in furtherance of the alleged conspiracy.

Petitioner requests that this Court grant review.

Respectfully submitted.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-13656

Filed
U.S. Court of Appeals
Eleventh Circuit
June 30, 2000
Thomas K. Kahn
Clerk

D.C.Docket No. 98-00020-CR-001-7

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRETT HAROLD BLITCH,
JERRY KEITH MOORE,

Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Georgia

(June 30, 2000)

Before TJOFLAT, WILSON and FLETCHER*, Circuit Judges.

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*Honorable Betty B. Fletcher, U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

PER CURIAM:

AFFIRMED. See 11 Cir. R. 36-1

PER CURIAM

AFFIRMED. See 11th Cir.R. 36-1.

11th Cir. R. 36-1 provides:

When the Court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d) summary judgment; directed verdict, or judgment on the pleadings is supported by the record;

(e) judgment has been entered without a reversible error of law; and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-13656-JJ

Filed
U.S. Court of Appeals
Eleventh Circuit
August 30, 2000
Thomas K. Kahn
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRETT HAROLD BLITCH.
JERRY KEITH MOORE,

Defendants-Appellants.

On Appeal from the United States District Court for the
Middle District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion_____, 11th Cir., 19___, _____F.2d_____).

Before: TJOFLAT, WILSON and FLETCHER*, Circuit Judges.
PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judges in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the petition(s) for Rehearing en Banc are DENIED.

ENTERED FOR THE COURT:
S/Wilson
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)

*Honorable Betty B. Fletcher, U.S. District Judge for the Ninth Circuit, sitting by designation

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

UNITED STATES OF AMERICA	**: CRIM. NO. 7:98-CR-20-HL**
	:
vs.	**: VIOLATIONS:**
	: 18 U.S.C. § 371
BRETT HEROLD BLITCH,	**: 18 U.S.C. § 844(i)**
LARRY WAYNE DAY,	**: 18 U.S.C. § 1341**
JERRY KEITH MOORE,	**: 18 U.S.C. § 1956(h)**
	: 18 U.S.C. 1956(a)(1)(A)(i)
	:18 U.S.C. § 982
	:18 U.S.C. § 2

THE GRAND JURY CHARGES:

INTRODUCTION

1. At all times material to this Indictment, Blitch Ford, Incorporated (hereinafter referred to as "Blitch Ford"), Homerville, Georgia, was a corporation operating as an automobile dealership under the laws of the State of Georgia.

2. At all times material to this Indictment, Co-defendant **BRETT HEROLD BLITCH** co-owned Blitch Ford and served as a principal officer and member of the Board of Directors.

3. At all times material to this Indictment, Blitch Ford was insured against loss by fire by Motors Property & Casualty Insurance Company (hereinafter referred to as "MIC").

COUNT ONE

Beginning on or about April 1, 1996, and continuing until on or about January 28, 1998, in the Valdosta Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, the Defendants,

BRETT HEROLD BLITCH, LARRY WAYNE DAY AND JERRY KEITH MOORE,

knowingly and willfully conspired with each other and with others, both known and unknown to the Grand Jury, to commit certain offenses against the United States in violation of Title 18, United States Code, Section 371, namely:

(A) to maliciously damage and destroy by means of fire, a building used in an activity affecting interstate commerce; that is, Blitch Ford located in Homerville, Georgia, in violation of Title 18, United States Code, Section 544(l) and

(B) to devise, and intend to devise, a scheme and artifice to defraud and obtain money from MIC by false and fraudulent representations, pretenses and by making a false claim of loss by fire of Blitch Ford to MIC, and by causing to be delivered by the United States Postal Service to Blitch Ford, located at 213 East Dame Avenue, Homerville, Georgia, a check in the amount of $50,000.00 from MIC, made payable to Blitch Ford and by causing to be delivered by the United States Postal Service to Daniel L. Studstill, located a 110 North Dogwood Drive, Nashville, Georgia, a check in the amount of $290,000.00 from MIC, made payable to Farmers and Merchants Bank and Robert F. Williams, all in violation of Title 18, United States Code, Section 1341.

MANNER AND MEANS OF THE CONSPIRACY

1. As part of this conspiracy, Defendant **BRETT HEROLD BLITCH,** aided and abetted by Defendants **LARRY WAYNE DAY** and **JERRY KEITH MOORE,** as well as others both known and unknown to the Grand

Jury, devised a scheme to defraud MIC by setting fire to Blitch Ford and by making a false claim to MIC for insurance benefits.

2. In furtherance of this scheme, Defendant **BRETT HEROLD BLITCH** requested Defendant **LARRY WAYNE DAY** to hire someone to set a fire at Blitch Ford.

3. In furtherance of this scheme, Defendant **LARRY WAYNE DAY** approached other persons for the purpose of recruiting someone to set a fire at Blitch Ford.

4. In furtherance of this scheme, Defendant **JERRY KEITH MOORE** agreed to set the fire at Blitch Ford.

5. To further effectuate this scheme, Defendants **BRETT HEROLD BLITCH** and **LARRY WAYNE DAY** gave Defendant **JERRY KEITH MOORE** a key to Blitch Ford in order to enter the building and set the fire.

6. In furtherance of this scheme, Defendant **BRETT HEROLD BLITCH** reported the fire to MIC and claimed a loss under the terms of Blitch Ford's insurance contract.

7. In furtherance of this scheme, Defendant **BRETT HEROLD BLITCH** agreed to pay Defendants **LARRY WAYNE DAY** and **JERRY KEITH MOORE** once Defendant **BRETT HEROLD BLITCH** received insurance proceeds from MIC pursuant to his false claim.

8. To further this scheme, Defendant **BRETT HEROLD BLITCH** opened an "insurance account" on behalf of Blitch Ford from which he could pay Defendants **LARRY WAYNE DAY** and **JERRY KEITH MOORE.**

9. Also in furtherance of this scheme, the Defendants **BRETT HEROLD BLITCH, LARRY WAYNE DAY** and **JERRY KEITH MOORE** agreed to characterize the payments made to Defendants **LARRY WAYNE DAY** and **JERRY KEITH MOORE** as gambling debts owed to a "bookie". By doing so the defendants intended to conceal the fact that such payments represented payments for starting the fire at Blitch Ford.

OVERT ACTS

To accomplish the goals of the conspiracy outlined above, the Defendants

BRETT HEROLD BLITCH, LARRY WAYNE DAY AND JERRY KEITH MOORE

committed several overt acts, including, but not limited to, the following:

1. The Grand Jury realleges and incorporates herein paragraphs 1 through 9 of the "Manner and Means" as overt acts.

2. On or about June 19, 1996, Defendant **JERRY KEITH MOORE** traveled from Nahunta, Georgia to Blitch Ford in Homerville, Georgia.

3. On or about June 19, 1996, Defendant **JERRY KEITH MOORE** entered Blitch Ford using a key to the building.

4. On or about June 19, 1996, Defendant **JERRY KEITH MOORE** used lighter fluid to set a fire in the parts department of Blitch Ford.

5. On or about June 20, 1996, Defendant **BRETT HEROLD BLITCH** telephoned the McNeacl Insurance Agency to report the fire.

6. On or about June 28, 1996, Defendant **BRETT HEROLD BLITCH** caused MIC to mail to him, through the United States Postal Service, a check in the amount of $50,000.00 made payable to Blitch Ford.

7. On or about July 8, 1996, Defendant **BRETT HEROLD BLITCH** opened a "Blitch Ford, Inc. Insurance Account" with the check for $50,000.00 he received from MIC.

8. On or about July 19, 1996, Defendant **BRETT HEROLD BLITCH** caused a check drawn on the account of "Blitch Ford, Inc. Insurance Account" at Empire Banking Company, to be made payable to "Ed's BP" in the amount of $2,938.71 knowing that the check represented proceeds of a specified unlawful activity. He then presented the check to Jane Douglas, co-owner of Ed's BP, and requested that she endorse the check. After Jane Douglas endorsed the check, Defendant **BRETT HEROLD BLITCH** endorsed the check himself and cashed it.

9. On or about July 19, 1996, Defendant **BRETT HEROLD BLITCH** asked Jane Douglas to provide him with fraudulent invoices to account for the check described in Overt Act Eight.

10. On or about July 19, 1996, Defendant **BRETT HEROLD BLITCH** paid Defendant **JERRY KEITH MOORE** $2,000.00 in cash for setting the fire at Blitch Ford using the funds obtained in the transaction described in Overt Act Eight.

11. On or about November 10, 1996, Defendant **BRETT HEROLD BLITCH** mailed a "Sworn Statement in Proof of Loss" to MIC in which he falsely stated that the loss of Blitch Ford resulted from an "accidental electrical fire."

12. On or about March 3, 1997, Defendant **BRETT HEROLD BLITCH** caused MIC to mail MIC, through the

United States Postal Service, a check in the amount of $290,000.00 made payable to Farmers and Merchant Bank and Robert F. Williams, in response to the false and fictitious claim submitted by Defendant **BRETT HEROLD BLITCH.**

COUNT TWO

On or about June 19, 1996, in the Valdosta Division of the Middle District of Georgia, the Defendants,

BRETT HEROLD BLITCH, LARRY WAYNE DAY AND JERRY KEITH MOORE,

aided and abetted by each other, and others known and unknown to the Grand Jury, maliciously damaged and destroyed, by means of fire, a building used in and activity affecting interstate commerce; that is, Blitch Ford located at 213 East Dame Avenue, Homerville, Clinch County, Gerogia, in violation of Title 18, United States Code, Sections §44(l) and 2.

COUNT THREE

1. On or about June 28, 1996, in the Valdosta Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, the Defendants

BRETT HEROLD BLITCH, LARRY WAYNE DAY AND JERRY KEITH MOORE,

aided and abetted by each other, and others known and unknown to the Grand Jury, did knowingly and willfully devies, and intend to devise, a scheme and artifice to defraud and obtain money from MIC by false and fraudulent representations and pretenses.

2. The scheme and artifice so devised, and intended to be devised, was in substance as follows:

(A) The Grand Jury realleges and incorporates herein paragraphs 1 through 3 of the "Introduction."

(B) Defendant **BRETT HEROLD BLITCH** devised a scheme to defraud MIC by setting fire to Blitch Ford and by making a false claim for insurance proceeds pursuant to Blitch Ford's insurance policy with MIC.

(C) Defendant **BRETT HEROLD BLITCH** asked defendant **LARRY WAYNE DAY** to hire someone to set a fire at Blitch Ford.

(D) Defendant **LARRY WAYNE DAY** approached other persons for the purpose of recruiting someone to set a fire at Blitch Ford.

(E) Defendant **LARRY WAYNE DAY** hired Defendant **JERRY KEITH MOORE** to set the fire at Blitch Ford.

(F) On or about June 19, 1996, Defendant **JERRY KEITH MOORE** entered Blitch Ford and used lighter fluid to start a fire in the parts department of the building. The fire completely destroyed Blitch Ford.

(G) Defendants **BRETT HEROLD BLITCH,** and **LARRY WAYNE DAY** gave defendant **JERRY KEITH MOORE** a key to Blitch Ford so that he could enter the building.

(H) Defendant **BRETT HEROLD BLITCH** reported the fire to MIC to collect proceeds (money) under the terms of Blitch Ford's insurance contract with MIC.

(I) Defendant **BRETT HEROLD BLITCH** agreed to

pay Defendants **LARRY WAYNE DAY** and **JERRY KEITH MOORE** once Defendant **BRETT HEROLD BLITCH** received insurance proceeds from MIC.

(J) Defendant **BRETT HEROLD BLITCH** used proceeds received from MIC to open an "insurance account" on behalf of Blitch Ford from which he could pay Defendants **LARRY WAYNE DAY** and **JERRY KEITH MOORE** for starting the fire.

(K) The Defendants, **BRETT HEROLD BLITCH, LARRY WAYNE DAY** and **JERRY KEITH MOORE** agreed to characterize the payments made to Defendants **LARRY WAYNE DAY** and **JERRY KEITH MOORE** as gambling debts owed to a "bookie". By doing so, the defendants intended to conceal the fact that such payments represented payments by Defendant **BRETT HEROLD BLITCH** to Defendants **LARRY WAYNE DAY** and **JERRY KEITH MOORE** for setting the fire.

3. On or about June 28, 1996, in the Valdosta Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, the Defendants,

BRETT HEROLD BLITCH, LARRY WAYNE DAY AND JERRY KEITH MOORE,

aided and abetted by each other, and others known and unknown to the Grand Jury, for the purpose of executing the scheme and artifice to defraud referenced above, caused MIC, at Post Office Box 660168, Dallas, Texas, to deliver through the United States Postal Service to Blitch Ford, located at 213 East Dame Avenue, Homerville, Georgia, a check in the amount of $50,000.00 made payable to Blitch Ford, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT FOUR

The Grand Jury realleges and incorporates herein paragraph two (2) of **COUNT THREE** as if that paragraph were fully set forth herein.

1. On or about March 3, 1997, in the Valdosta Division of the Middle District of Georgia, the Defendants,

BRETT HEROLD BLITCH, LARRY WAYNE DAY AND JERRY KEITH MOORE,

aided and abetted by each other, and others known and unknown to the Grand Jury, did knowingly and willfully devise, and intend to devise, a scheme and artifice to defraud and obtain money from MIC by false and fraudulent representations and pretenses.

2. The Grand Jury realleges and incorporates herein paragraphs 1 through 3 of the "Introduction," and paragraph two of **COUNT THREE**.

3. On or about March 3, 1997, in the Valdosta Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, the Defendants,

BRETT HEROLD BLITCH, LARRY WAYNE DAY AND JERRY KEITH MOORE,

aided and abetted by each other, and others known and unknown to the Grand Jury, for the purpose of executing the scheme and artifice to defraud referenced above, caused MIC, at Post Office Box 660168, Dallas, Texas, to deliver through the United States Postal Service to Daniel L. Studstill located at 110 North Dogwood Drive, Nashville, Georgia, a check in the amount of $290,000.00 made payable to Farmers and Merchants Bank and Robert F. Williams, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT FIVE

The Grand Jury realleges and incorporates herein paragraphs 1 through 3 of the "Introduction," as well as paragraphs 1 through 9 of the "Manner and Means" and paragraphs 1 through 12 of the "Overt Acts," outlined in **COUNT ONE.**

Beginning on or about April 1, 1996, and continuing until on or about January 28, 1998, in the Valdosta Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, the Defendants,

BRETT HEROLD BLITCH, LARRY WAYNE DAY AND JERRY KEITH MOORE,

aided and abetted by each other, and others known and unknown to the Grand Jury, knowingly and willfully conspired with each other and with others, both known and unknown to the Grand Jury, to commit and carry out an offense against the United States in violation of Title 18, United States Code, Section 1956(h), namely; the Defendants knowingly conducted and attempted to conduct financial transactions affecting interstate and foreign commerce involving the use of financial institutions engaged in, and which activities affected, interstate commerce, and which transactions involved the proceeds of specified unlawful activities. These specified unlawful activities included: (1) the malicious damaging and destroying of Blitch Ford by means of fire, in violation of Title 18, United States Code, Section 844(i) and (2) mail fraud, in violation of Title 18, United States Code, Section 1341; all with intent to promote the carrying on of the specified unlawful activities. Furthermore, while conducting and attempting to conduct these financial transactions, the Defendants knew the funds involved in those transactions represented the proceed of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(A)(i), all in violation of Title 18, United States Code, Section 1956(h).

COUNT SIX
FORFEITURE ALLEGATION

1. The United States hereby realleges and incorporates the allegations contained in **COUNTS ONE** through **FIVE** of this Indictment into this Count for the purpose of alleging forfeitures to the United States of America, pursuant to the provisions of Title 18, United States Code, Section 982.

2. As a result of the commission of the above-referenced violation of Title 18, United States Code, Section 844(i), and offense punishable by imprisonment for more than one year, the Defendants **BRETT HEROLD BLITCH, LARRY WAYNE DAY** and **JERRY KEITH MOORE** shall forfeit to the United States any and all property constituting, or derived from, any proceeds the Defendants obtained, directly or indirectly, as a result of this violation.

3. As a result of the commission of the above-referenced violation of Title 18, United States Code, Section 1956, an offense punishable by imprisonment for more than one year, the Defendants **BRETT HEROLD BLITCH, LARRY WAYNE DAY** and **JERRY KEITH MOORE** shall forfeit to the United States all of their interest in any and all property constituting and derived from any proceeds the Defendants obtained, directly or indirectly, as a result of this violation, as well as any and all property, real or personal, involved in this violation, or any property traceable to such property.

4. Further, if any of the property subject to forfeiture, as a result of any act or omission of the Defendants(s):

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred, sold to or deposited with, a third person;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be subdivided without difficulty; it is the intent of the United States pursuant to Title 18, United States Code, Section 982(b) in connection with Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the Defendants up to the value of the above forfeitable property.

A TRUE BILL

/S_____
FOREPERSON OF THE GRAND JURY

Presented By:

/S_____
RICHARD S. MOULTRIE, JR.
ASSISTANT UNITED STATES ATTORNEY
MIDDLE DISTRICT OF GEORGIA

United State District Court
Middle District of Georgia

Filed
U.S. District Court
99 Sept. 16 AM
11:50
S/

United States of America

Judgment in a Criminal Case

v. (For Offenses committed On or After November 1,1987)

Brett Herold Blitch

Case Number:
7;98CR00020-001

Converse Bright & Berrien Sutton

Defendant's Attorney

THE DEFENDANT
_____pleaded guilty to count(s)_____
_____pleaded nolo contendere to count(s) (which was accepted by the court.
x_____was found guilty on count(s) 1-5 after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number
18 U.S.C'371	Conspiracy to commit certain offenses against the United States	1/28/1998	1
18 U.S.C'844(i)	Maliciously damaging or destroying by fire a building used interstate commerce	6/19/1996	2

18 U.S.C'	1341	Mail Fraud	06/28/1996 3
18 U.S.C'	1341	Mail Fraud	03/03/ 1997 4

See Additional counts of Conviction-Sheet 1.01

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

_____The defendant has bee found not guilty on count(s)_____

_____Count(s)_____(is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Defendant' Soc. Sec. No. 256-37-3352
Defendant's Date of Birth: 09/06/1967

Defendant's USM No. 88727-020

Defendant's Residence Address:
377 Shannon Road

Homerville, GA. 31634

09/09/1999

Date of Imposition of Judgment

S/_____
Hugh Lawson,
Judge
U.S. District Court

Defendant's Mailing Address:
377 Shannon Road
Homerville, Ga. 31634
Defendant

Name & Title of Judicial Officer

9/15/99
Date

A0-245B(Rev.3/95) Sheet 1–Judgment in a Criminal case
DEFENDANT: Brett Herold Blitch
CASE NUMBER: 7:98CR00020-001

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Concluded	Number
18 U.S.C' 1956h	icw 18:1956(a)(1)(A)(i) money laundering Conspiracy to	01/28/1998	5

Q At the conclusion of the investigation of the fire scene, did you have an opinion as to the cause of that fire at the time on June 21st?

A. Yes, sir, I did.

Q What was that?

A I called it undetermined.

***

Q And you did not find on this fire scene any evidence of an incendiary or intentional fire, did you?

A No, sir.

Q. And it was also because there were several other possible causes of the fire that you couldn't rule out at that point.

A. "Yes, sir.

Q. One of those is lightning.

A. Yes, sir.

Q. You mentioned that in your report.

A. Yes, sir.

Q. And you checked to see if there was lightning in Homerville and in that area on that–at that time and found there was.

A. Yes, sir.

Q. So that's one of the possibilities that you cannot rule out.

A. That's correct.

Q MR. PETERMAN: Mr. Dobbins, would you read the statement that Mr. Moore gave you to the jury?

A "I have a part in the Homerville Ford Place, Blitch Ford being destroyed. I will in anyway cooperate upon your request to help in this investigation.". Signed "Jerry Moore".

A. Yeah, he told me he burned the place down. He said "I burned the dealership down." "Yeah, I burned Blitch Ford down in Nahunta—or in Homerville."

***

Q MR. PETERMAN: Mr. Dobbins, would you read the statement that Mr. Moore gave you to the jury?

A "I have a part in the Homerville Ford Place, Blitch Ford being destroyed. I will in anyway cooperate upon your request to help in this investigation.". Signed "Jerry Moore".

Q. Do you recall being with Jerry Moore on one occasion when he met with a man that you didn't recognize at his mother's house?

A. I was at his house one day and a guy pulled up he said was Brett Blitch, but I don't know that it was him.

Q. So, you had never seen Brett Blitch before; is that correct?

A. No, sir.

Q. You don't know Brett Blitch?

A. No, sir.

Q. Would you explain the jury exactly what happened on that occasion.

A. As far as I remember, we was standing out in the yard and this guy puled up in a car and handed Jerry some money, and when he left Jerry said it was Brett Blitch.

Q. Did you see the unidentified person that Jerry Moore described as Brett Blitch actually hand Jerry Moore some money?

A. No, sir, I can't recall actually seeing him handing him the money, but he had some money in his hand.

Q. So, did Jerry Moore show you some money?

A. Yes, sir.

THE COURT: Well, I think that the case cited uses –says this and I think this presumption that a fire is of accidental origin or providential cause may be the rule in Georgia, but I'm not certain there's any federal rule of that Mr. Bright, and that's my problem with it.

MR. BRIGHT: Except to the extent that it is common law which is part of the federal law.

THE COURT: Well, I probably not going to Charge the jury that there is that— a legal presumption to that effect.

DEFENDANT: Brett Harold Blitch
CASE NUMBER: 7:98 CR0020-001

STATEMENT OF REASONS

___The court adopts the factual findings and guideline application in the presentence report.

OR

x___The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary)

Court determined base offense level for Count Group 1 (Guideline USSG 2K1/4) is 20.

Guideline Range Determined by the Court:

Total Offense Level:	27
Criminal History Category	1
Imprisonment Range	70 to 87 months
Supervised Release Range	2 to 3 years
Fine Range	$12,500.00 to $125,000.00

x__ Fine waived or below the guideline range because of inability to pay.

Total amount of Restitution $805,046.65

_____Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. section 3663(d).

_____For offenses that require the total amount of loss to be stated, pursuant to chapters 109A, 110, 110A and 113 of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow

for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

_____Partial restitution is ordered for the following reason(s).

x_____The sentence is within the guideline range, that range does not exceed 24 months and the court finds no reason to depart from the sentence called for by the guidelines.

OR

_____The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

_____The sentence departs from the guideline range:

_____upon motion of the government, as a result of defendant's substantial assistance.
_____for the following specific reason(s):

49. Adjustment for Role in the Offense: Pursuant to USSG Section 3B1.1(c), the defendant was an organizer, leader, manager or supervisor in the criminal activity. Therefore an upward adjustment of 2 levels is appropriate. +2

45. Application of the grouping rules at USSG Section 3D1.2state that multiple counts involving substantially the same harm shall be grouped into a single group. Therefore, count 1 (a), and count 2 group to form Count Group 1 as they involve the same victim and the same act or transaction, USCG Section 3D1.2(a). Count 1 (b), counts 3,4, and 5, group to form Count Group II, as their offense level is determined largely on the basis of the total amount of harm or loss, USCG Section 3D1.2(d).